(14)

No. 03-1693

Supreme Court, U.S.
FILED
DEC 8 - 2004
OFFICE OF THE CLERK

In The

Supreme Court of the United States

MCCREARY COUNTY, KENTUCKY, et al.,

Petitioners,

v.

AMERICAN CIVIL LIBERTIES UNION OF KENTUCKY, et al.,

Respondents.

On Writ Of Certiorari To The United States Court Of Appeals For The Sixth Circuit

BRIEF OF THE AMERICAN LEGION AS *AMICUS CURIAE* IN SUPPORT OF PETITIONERS

PHILIP B. ONDERDONK, JR.
THE AMERICAN LEGION
700 N Pennsylvania St.
Indianapolis, Indiana
46204-1172

KELLY SHACKELFORD
Counsel of Record
HIRAM S. SASSER III
LIBERTY LEGAL INSTITUTE
903 18th Street, Suite 230
Plano, Texas 75074
(972) 423-3131

Counsel for Amicus Curiae

COCKLE LAW BRIEF PRINTING CO. (800) 225-6964
OR CALL COLLECT (402) 342-2831

TABLE OF CONTENTS

	Page
TABLE OF AUTHORITIES	ii
INTEREST OF *AMICUS CURIAE*	1
SUMMARY OF ARGUMENT	2
ARGUMENT	2
I. America's war memorials honoring the sacrifice of millions deserve protection	2
A. Religious imagery is an important part of American military culture	3
B. Lower federal courts have abused this Court's Establishment Clause jurisprudence to unnecessarily remove war memorials by misusing the endorsement test	7
C. Without protection from this Court, countless veterans memorials will come under fire in the courts, dishonoring the memory of those that gave their lives for a cause greater than themselves and disheartening the millions of war veterans that find solace and understanding in such memorials	9
II. This case represents an opportunity for this Court to affirm that acknowledgment of religion as worthy of appreciation and as a source of public good does not rise to the level of endorsement that violates the Establishment Clause	15
A. The Establishment Clause should not be used as a tool to crush the aspirations and hopes of those who long for an eternal purpose for the sacrifice of so many	16

TABLE OF CONTENTS – Continued

Page

B. Recognizing religion as a positive social force does not violate the endorsement test 17

CONCLUSION 19

TABLE OF AUTHORITIES

Page

CASES

Buono v. Norton, 371 F.3d 543 (9th Cir. 2004) 7

Capitol Square Review and Advisory Bd. v. Pinette, 515 U.S. 753 (1995) 15, 16

Elk Grove Unified Sch. Dist. v. Newdow, 124 S. Ct. 2301 (2004) 6, 7, 16

Eugene Sand & Gravel, Inc. v. City of Eugene, 558 P.2d 338 (Or. 1976), *cert. denied*, 434 U.S. 876 (1977) 5, 8

Gonzales v. North Township of Lake Country, 4 F.3d 1412 (7th Cir. 1993) 8

Jewish War Veterans v. United States, 695 F. Supp. 3 (D. D.C. 1988) 8

Lemon v. Kurtzman, 403 U.S. 602 (1971) 7

Lynch v. Donnelly, 465 U.S. 668 (1984) 7

Separation of Church & State Comm. v. City of Eugene, 93 F.3d 617 (9th Cir. 1996) 6, 8

Texas v. Johnson, 491 U.S. 397 (1989) 14

FEDERAL REGULATION

Fed. Reg. 45114 (2004) 4

OTHER AUTHORITIES

Alexis de Tocqueville, *Democracy in America* (Henry Reeve Translation, revised and corrected, 1829) 5

INTEREST OF *AMICUS CURIAE*[1]

Amicus is The American Legion, chartered by Congress in 1919 as a patriotic, mutual-help, war-time veterans organization. The American Legion is a community service organization which now numbers nearly 2.7 million members – men and women – in nearly 14,000 American Legion Posts worldwide, including Puerto Rico, France, Mexico and the Philippines. Since its inception, the American Legion has maintained an ongoing concern and commitment to veterans and their families. The Legion was instrumental in the creation of the U.S. Veterans Bureau, now known as the Department of Veterans Affairs, and has continued to be an advocate for veteran's rights. In 1935, the American Legion established Boys State for the advancement of democratic and patriotic ideals to counter the Fascist inspired Young Pioneer Camps.

The American Legion continues its work today helping veterans survive economic hardship, secure government benefits, and promoting social stability and well-being for those that have honorably served our Nation's common defense. The Legion is dedicated to preserving American values, promoting patriotism and encouraging self-less service and sacrifice among the Nation's youth. In short, the American Legion seeks to honor the sacrifice for our country of those who have gone before us, support those who continue to sacrifice for our

---

[1] The parties have consented to the filing of this brief. Their letters of consent have been filed with the Clerk of this Court. Pursuant to this Court's Rule 37.6, none of the counsel for the parties authored this brief in whole or in part and no one other than *amicus* or its counsel contributed money or services to the preparation and submission of this brief.

country today and prepare those who will be called to sacrifice for all of us in the future.

SUMMARY OF ARGUMENT

This case presents an opportunity for this Court to protect public displays of religious imagery and preserve our Nation's veterans memorials. Religious imagery has permeated American military culture throughout the history of the United States. Through veterans memorials and the religious imagery that marks so many memorials, the people of this Nation find solace and meaning for the sacrifice of our sons and daughters and are inspired by an eternal hope for the future of this country.

Lower federal courts have misused the endorsement test to destroy veterans memorials bearing religious imagery. Hecklers have successfully misused the endorsement test to remove any religious reference in the public square, doing great damage to this Nation's veterans memorials. This Court should protect public acknowledgement of religion and preserve our Nation's veterans memorials, which strive to honor the sacrifice of our sons and daughters and give meaning for such sacrifice and an eternal hope for generations to come.

ARGUMENT

I. America's war memorials honoring the sacrifice of millions deserve protection.

For more than two hundred and twenty-five years, millions of Americans have sacrificed their lives for their

country, their brethren, and their God. Their memory will long endure, etched in granite and marble, chiseled with a permanence that echoes their valiant lives. Each man and woman who fought our nation's wars and gave their lives in service is remembered in local, state and national war memorials, including those unknown soldiers who find their only recognition in the Tomb of the Unknowns, forever solemnly guarded, honored with a wreath[2] laying ceremony, with a simple inscription capturing their lives and their death – "Here Rests In Honored Glory An American Soldier Known But To God." (*Tomb of the Unknowns*, Arlington National Cemetery).

A. Religious imagery is an important part of American military culture.

The American landscape is laden with monuments and memorials of granite, marble and metal, invoking religious imagery, honoring those who sacrificed their lives for the rest of us. For many who have sacrificed their sons and daughters at the altar of freedom, such religious imagery serves as rallying points similar to that advanced by General Douglas MacArthur in 1962 in an address accepting the Thayer Award at West Point. "Duty, Honor Country. Those three hallowed words reverently dictate what you ought to be, what you can be, what you will be. They are your rallying points: to build courage, when courage seems to fail; to regain faith when there seems to be little cause for faith; to create hope, when hope becomes

[2] The wreath laying ceremony has ancient Greek religious origins. *See* <http://www.warmemorialsnsw.asn.au/laurel.cfm>.

forlorn."[1] General MacArthur went on to remind the Corp of Cadets "The soldier, above all other men, is required to practice the greatest act of religious training – sacrifice. In battle and in the face of danger and death, he discloses those divine attributes which his Maker gave when he created man in his own image. No physical courage and no brute instinct can take the place of the Divine help which alone can sustain him."

Religion, in some form, has always permeated military culture. Soldiers represent the cross-section of America, and the armed forces have been where cultural boundaries melt away and divides are overcome. Thus, the armed forces truly are the great melting pots of America, unified by common themes of American culture, including religious themes. Evidence of these common themes appear in war memorials, but also appear in military decorations, such as the Navy Cross and the Distinguished Flying Cross. Specifically, the Combat Medical Badge and the Expert Field Medical Badge are officially described as bearing a "greek cross." *Decorations, Medals, Ribbons and Similar Devices*, 69 Fed. Reg. 45114 (2004). The nature of armed combat for the survival of our civilization and

[1] Cadets at West Point are required to memorize this portion of General MacArthur's speech, which is recorded for the cadets in Bugle Notes, a collection of required memorized knowledge each cadet must master. Included in Bugle Notes is the song, *The Corps*. The opening for the song, required to be memorized by every cadet, is "The Corp! Bareheaded salute it, With eyes up, thanking our God." Each fourth-class cadet (freshman) or plebe is required to recite this song in its entirety, including the reference "thanking our God" whenever called upon to do so by upper-class cadets. In addition, cadets are required to memorize a traditional academy song, entitled *Benny Havens*, much depicted in the movie *The Long Gray Line*, which includes the line "Until on our last battlefield the light of heaven, shall glow."

national heritage requires us to search within ourselves and culture to identify the common threads that bind us together.

For more than two hundred years, one of those common threads is that we are a peculiarly religious people. *See generally* Alexis de Tocqueville, *Democracy in America* (Henry Reeve Translation, revised and corrected, 1829). That does not mean that every person who served or serves on the front lines has a religious dispensation, and certainly soldiers possess divergent views of religion and embrace different faiths. War monuments reflect this religious theme in part to honor the motivation of so many who fought and died for this nation's salvation, and in part to give purpose and meaning to the sacrifice of the youth of our nation for those who continue to mourn their loss, when such a purpose is not readily apparent. *See Eugene Sand & Gravel, Inc. v. City of Eugene*, 558 P.2d 338 (Or. 1976), *cert. denied*, 434 U.S. 876 (1977) ("a monument with a cross is an appropriate symbol for sacrifice by men who gave their lives for their country in time of war").

The United States fought the Revolution to secure, among other things, religious freedom. The abolitionist movement, which gave meaning and purpose to many soldiers serving in the Army of the Republic, was a distinctly religious movement. The First World War saw the sacrifice of millions of young men, with little readily discernable meaning behind their death. In fact, in Europe, war memorials honoring those of the First World War usually feature a Cross of Sacrifice, in light of the desperation of the Europeans, especially the English, to find some reason for the terrible loss of life. World War II was fought as a righteous and desperate struggle to overcome and defeat a menacing and oppressive evil that

threatened to engulf entire continents. The Cold War saw the Evil Empire devoid of religion as the Communist State sandblasted Russian religious heritage out of the public square and out of the hearts of desperate men seeking to cling to something, but left with nothing but the State. The evils of slavery, fascism and brutal socialism were overcome by a people motivated at least in part by a deep conviction of the soul that might does not make right and that the eternal required them to sacrifice for the good of others. Such motivation deserves, at the very least, public acknowledgment.

While the intellectual elite may lay siege to such notions with the pen from the comfortable confines of the Ivory Tower, it has been the sacrifice of countless Americans willing to die for something greater than themselves that has secured that very freedom for their critics. As Justice O'Connor aptly articulated, "[i]t is unsurprising that a Nation founded by religious refugees and dedicated to religious freedom should find references to divinity in its symbols, songs, mottoes, and oaths. Eradicating such references would sever ties to a history that ***sustains this Nation even today***." *Elk Grove Unified Sch. Dist. v. Newdow*, 124 S. Ct. 2301, 2322 (2004) (O'Connor, J., concurring) (emphasis added).[4]

[4] Judge O'Scannlain captured the sentiments of the founding of our Nation and subsequent spirit of the importance of religion in public life in his concurring opinion in *Separation of Church & State Comm. v. City of Eugene*, 93 F.3d 617 (9th Cir. 1996).

B. Lower federal courts have abused this Court's Establishment Clause jurisprudence to unnecessarily remove war memorials by misusing the endorsement test.

A cross placed in a public park in 1934 by the Veterans of Foreign Wars in memory of those who died in World War I was ordered to be removed by the Ninth Circuit. *See Buono v. Norton*, 371 F.3d 543 (9th Cir. 2004). In *Buono*, the war memorial was designated as a war memorial to World War I by federal law. *See id.* at 549. The court declared that it was following the effects prong of *Lemon v. Kurtzman*, 403 U.S. 602 (1971) and Justice O'Connor's endorsement test to strike down the war memorial. *See id.* at 548. Yet, Justice O'Connor stated that "[f]acially religious references can serve other valuable purposes in public life as well." *Newdow*, 124 S. Ct. at 2322 (O'Connor, J., concurring). In fact, Justice O'Connor reminded the courts that she has consistently held "that such references 'serve, in the only ways reasonably possible in our culture, the legitimate secular purpose[] of . . . encouraging the recognition of what is worthy of appreciation in society." *Id.* (citing *Lynch v. Donnelly*, 465 U.S. 668, 692-93 (1984) (O'Connor, J., concurring)).

In *Buono*, the court of appeals employed flawed analysis that is not uncommon among federal courts. The court relied on the appearance of endorsement, improperly reducing the endorsement test to subjective form, transforming the test into a "heckler's veto," a result Justice O'Connor specifically cautioned against. *Newdow*, 124 S. Ct. at 2321 (O'Connor, J., concurring).

Other courts have likewise misapplied the endorsement test to eradicate veterans memorials designed to recognize "what is worthy of appreciation in society,"

namely the military service and personal sacrifice of veterans for something greater than themselves. *See, e.g.*, *Jewish War Veterans v. United States*, 695 F. Supp. 3 (D. D.C. 1988) (a cross cannot serve as a veterans memorial without violating the endorsement test); *Gonzales v. North Township of Lake Country*, 4 F.3d 1412 (7th Cir. 1993). In *Separation of Church & State Comm. v. City of Eugene*, 93 F.3d 617 (9th Cir. 1996), the court of appeals relied on the endorsement test, but failed to properly analyze the facts from the reasonable person standard required by the test.

In fact, *Eugene* is the epitome of Establishment Clause catastrophe and a perfect example of why Establishment Clause jurisprudence must be constantly revisited by this Court. Acknowledgement is not the same as endorsement. The veterans memorial at issue, a cross, was "first condemned, then twice approved, and now once again condemned, all by well-intentioned judges seeking to apply the Establishment Clause of the United States Constitution." *Id.* at 620 (O'Scannlain, J., concurring). In fact, the veterans memorial in *Eugene* was originally vindicated for the very reason that it was a veterans memorial, and thus held a secular purpose, despite the fact that it bore a cross. *See Eugene Sand and Gravel, Inc. v. City of Eugene*, 558 P.2d 338, 344 (Or. 1976), *cert. denied*, 434 U.S. 876 (1977) ("an appropriate ceremony was conducted by the American Legion to dedicate the cross as the 'Veteran's War Memorial Monument'").

C. Without protection from this Court, countless veterans memorials will come under fire in the courts, dishonoring the memory of those who gave their lives for a cause greater than themselves and disheartening the millions of war veterans who find solace and understanding in such memorials.

There are numerous veterans memorials throughout the country that invoke religious imagery. For example, the Argonne Cross in Arlington Cemetery, erected in part through the efforts of the Argonne Unit American Legion, sits among nineteen pine trees that represent the Argonne Forest where so many American servicemen gave their lives. A simple inscription on the base of the cross reads: "IN MEMORY OF OUR MEN IN FRANCE 1917 1918."

The Canadian Cross of Sacrifice, also among the graves in Arlington Cemetery, is a twenty-four foot gray granite cross that dominates its surroundings with a bronze sword affixed to the cross. The Cross of Sacrifice was dedicated on Armistice Day, 1927, honoring those Americans, with great internal conviction, who joined the Canadian Armed Forces to fight in World War I before the United States joined the war. Subsequently, the monument was modified to honor those that served in World War II and the Korean War.

Photo provided by Arlington National Cemetery <http://www.arlingtoncemetery.org/visitor_information/Canadian_Cross.html>

In fact, in Arlington Cemetery alone, there are numerous inscriptions of religious acknowledgement permanently displayed on public property. Chaplain's Hill Monument bears the inscription, "May God Grant Peace To Them And To The Nation They Served So Well." The Confederate War Memorial bears the inscription, "Victrix Causa Diis Placuit Sed Victa Caton," which means "The Victorious Cause was Pleasing to the Gods, But the Lost Cause to Cato" and depicts a woman extending a laurel wreath from ancient Greek religion to her fallen son. The Spanish-American War Monument bears the inscription, "TO THE GLORY OF GOD AND IN GRATEFUL REMEMBERANCE OF THE MEN AND WOMEN OF THE ARMED FORCES WHO IN THIS CENTURY GAVE THEIR LIVES FOR OUR COUNTRY THAT FREEDOM MIGHT LIVE." The Space Shuttle *Challenger* Memorial bears the inscription, " . . . put out my hand, and touched the face of God."

The Altar of the Nation, a national war memorial for all American war dead, is located in Rindge, New Hampshire at the Cathedral of the Pines. "It is comprised of stones donated as tributes from all United States Presidents since and including Harry Truman. It also contains stones from each of the fifty states and four territories and from Commanding Officers of America's Armed Forces, all incorporated into an Altar that symbolizes the unity and strength of grateful people."[5] In 1962, the Fraternal Order of Eagles donated a Ten Commandments monolith, which is prominently displayed in the Cathedral of the Pines. "The Presidents of the United States and each of the

[5] <www.cathedralpines.com>.

governors of the 50 states and four territories have had their tributes to the American War Dead placed at the Altar of the Nation on Memorial Day."[6] In 1967, the Women's Memorial Bell Tower was dedicated at the entrance to the Cathedral of the Pines and was the first veterans monument in the United States specifically honoring women who gave their lives for their country. This incredible war memorial is even more fascinating as a living memorial reminding all Americans of the great pluralism and common bonds we all share.[7]

This war memorial features a very large Ten Commandments display and a religious altar, and is among the Cathedral of the Pines, and bears a cross and crucifix in prominent locations. Yet, secular and various faith groups are apparently not offended. In fact, a veritable cross section of America used the war memorial in 2004 for meetings, memorial services, and for a Meditational Labyrinth Walk. Veterans of Foreign Wars, the 101st Airborne Division, Daughters of Scotia, Masons, United Church of Christ, Greek Orthodox Divine Liturgy, Baha'i Faith, a Baptist church, the United States Air Force band, the Daughters of the American Revolution, the Assembly of God, Christian Scientists, the Loyal Order of the Moose, the International Order of the Rainbow for Girls, and others made use of the facility in 2004.

---

[6] *Id.*

[7] The real beauty of this memorial is its truly pluralistic appeal to people of many faiths and secular organizations. Nothing captures its living memorial quality better than the brief schedule of events posted on the website, which is included in the appendix of this brief. The schedule itself is a powerful testament to the pluralism of this Nation, and the common bonds sealed with the sacrifice of our youth in time of war.

The prominent displays of a crucifix and the cross at the Altar of the Nation have not deterred the Annual Jewish Service being conducted there for the past fifty-eight years. The religious imagery of this living war memorial serves as a unifying force for our culture, and indeed our Nation. Yet, many of the same arguments being proffered to ban the display of the Ten Commandments in McCreary County would equally ban the Ten Commandments and Altar of the Nation in the Cathedral of the Pines. This cannot be allowed to happen.

In the capitol, the Peace Monument stands as a forty-four foot high monument in the circle to the west of the Capitol at Pennsylvania Avenue and First Street, N.W. This war memorial was erected in 1877-78 to commemorate the naval deaths at sea during the Civil War. Among the ancient Greek classical figures, Mars, the god of war and Neptune, the god of the sea are depicted, as well as the figure Victory, holding a laurel wreath. The Peace Memorial in Gettysburg bears the inscription, "With Firmness In The Right As God Gives Us To See The Right – Lincoln." Countless small towns and communities across the country have erected veterans memorials that bear religious inscriptions or invoke religious imagery. The City of Chicago dedicated the City Hall Memorial Plaque, a World War I and II memorial that bears the image of an angel. Blooming Grove, Texas built a Korean and Vietnam War Memorial that bears an inscription from the Book of Ecclesiastes. Such is the nature of thousands of veterans memorials across the country.

For some courts, these war memorials must be torn down. It is disheartening and distressing to think that Arlington Cemetery must be gutted because there are those who are offended by the religious imagery. If we

cannot even acknowledge this country's religious heritage in public to honor those who sacrificed their lives for something greater than themselves, how can we ever as a Nation look into the face of youth to call upon it to once again return to the alter of freedom and offer the same sacrifice given by generations before? Apparently, the heckler would prefer the sound of the beep, beep, beep of a crane signaling the collapse of the Cross of Sacrifice at Arlington Cemetery, rather than the respectful silence of those who approach the Cross, remember our fallen soldiers, and say a prayer for them and our country.

The wound grows deeper when such a heckler successfully challenges war memorials of those who died to protect the very freedom the heckler allegedly invokes to sandblast the memorial from history. At the same time, the veteran is called upon to avert his eyes when one burns the flag that symbolizes for many the cause for which brave men and women gave their lives.[8] The flag, like war memorials, maintains a vigilant watch over our Nation, reminding each of us of our national heritage and common bonds. Indeed, our National Anthem, inspired by the flag, as noted by Chief Justice Rehnquist in *Texas v. Johnson*,[9] captures the significance of the flag and religious imagery in our national identity in its first and

[8] Perhaps for veterans memorials, just as for the American Flag, there are those who identify the intrinsic value of such symbols that give them pause before rendering them disposable and devoid of eternal meaning. *See Texas v. Johnson*, 491 U.S. 397, 436-39 (1989) (Stevens, J., dissenting); *Id.* at 421-435 (Rehnquist, C.J., dissenting, O'Connor, J., joining).

[9] *Id.* at 423.

second verses.[10] The Court should provide protection to the war memorials of this country, as they stand vigilantly guarding the sacred honor of those who made the ultimate sacrifice for this Nation and give comfort and purpose for those they left behind.

II. This case represents an opportunity for this Court to affirm that acknowledgment of religion as worthy of appreciation and as a source of public good does not rise to the level of endorsement that violates the Establishment Clause.

The key to the endorsement test being properly applied is the reasonable observer standard consistently articulated by Justice O'Connor. *See Capitol Square Review and Advisory Bd. v. Pinette*, 515 U.S. 753, 781 (1995). This standard guides courts to avoid the "heckler's veto," and adjudicate that mere acknowledgement of religion does not rise to the

[10] The second verse, not often sung, is imbued with religious imagery and required to be memorized and recited along with the first verse by cadets at the United States Military Academy.

> Oh, thus be it ever when freemen shall stand between their loved homes and wild war's desolation;
>
> Bless'd with vict'ry and peace, may the heav'n-rescued land Praise the pow'r that hath made and preserv'd us a nation!
>
> Then conquer we must, when our cause it is just. And this be our motto: "In God is our trust!"
>
> And the Star-Spangled Banner in triumph shall wave, O'er the land of the free and the home of the brave.

level of an Establishment Clause violation. *See Newdow*, 124 S. Ct. at 2321 (O'Connor, J., concurring) (citing *Pinette*, 515 U.S. at 780 ("There is always *someone* who, with a particular quantum of knowledge, reasonably might perceive a particular action as an endorsement of religion") (emphasis in original)).

A. The Establishment Clause should not be used as a tool to crush the aspirations and hopes of those who long for an eternal purpose for the sacrifice of so many.

Veterans memorials exist to honor those who sacrificed their lives for something greater than themselves and serve as rallying points for survivors and others to remember their sacrifice and find solace, peace and reason for such loss. Religious imagery serves to acknowledge that most people served by the memorial rest their eternal hopes on God or some religious sentiment. No memorial, however brilliantly conceived, can represent the sentiments of all those it means to serve. But, the Establishment Clause should not be misused as a tool to reduce such sentiments to the lowest common denominator of sadness and gloom. Memorials exist not just to convey that the youth perished, end of story. Most people crave more than that; they crave an eternal hope that those who perished did not die in vain. While freedom is quickly extinguished without those who are willing to lay their lives on the line for something greater than themselves, the personal comfort and enjoyment derived from so called "freedom"-esque adventures such as viewing online pornography or watching the protected speech of a topless dancer offer little warmth for the soul of the loved ones of those who made the final sacrifice.

Our homes, our communities, our Nation demand that we elevate the cause of those who gave their lives for the rest of us to the highest platitudes of our cultural tradition. As a Nation, we cannot ignore the differences that define the uniqueness of American life, including religious diversity and the lack of religious sentiment among some. However, we cannot allow that diversity to swallow-up our uniquely American religious heritage, grounded in historical roots and fertilized with the sacrifices of our most treasured belongings, our sons and daughters.

Those who came before died for a reason. It is not sufficient to cast their sacrifice upon the trash heap of history by refusing to give an eternal significance to the brutality inflicted by war upon generations. We owe it to those who sacrificed their lives and those who mourn to acknowledge the common thread that binds each generation of Americans who have fought and died for the preservation of this great Nation and give eternal significance to the sacrifice made that the temporal occasionally regards dismissively as rather pointless. In a day and age when protesters call out that our brave soldiers die daily in Iraq for nothing but oil, it is incumbent upon the courts to give some leeway to those communities and governmental bodies that seek to inspire in citizens and future generations a reason to make the ultimate sacrifice.

B. Recognizing religion as a positive social force does not violate the endorsement test.

The acknowledgement of religion as an important historical factor in the development of American culture, as viewed by the reasonable observer, imbued with all knowledge, is not an Establishment Clause violation. Further, giving acknowledgment to religion or a particular

religious sentiment does not, on its own, give the reasonable observer cause to feel disenfranchised. Indeed, praise of one does not equate to a denigration of another. To acknowledge the good in a particular religious sentiment does not render the countless other sentiments or lack of sentiment for anything in particular insignificant, and cannot diminish the perceived worth of any individual. For the Court to rule that mere acknowledgement of a religious sentiment as a public good is impermissible would do nothing more than silence forever the graves of those who sacrificed themselves for God and Country, for whom the memorial speaks its eternal message.

The American Legion beseeches this Court to carefully weigh its words in a decision in this case. Federal courts across the country are doing great harm through their misuse of Establishment Clause jurisprudence. This Court should restrain them. The great and ultimate sacrifice of the sons and daughters of this Nation from the founding to the present hour in Iraq demands that this Court tread cautiously when its decision may have a far-reaching and eternal impact in how we honor their sacrifice and try, as a Nation, to find comfort and solace in their remembrance. The veterans memorials of this country were not lightly constructed, nor were they intended as advancements of a particular creed or sentiment. Instead, they represent this Nation's best efforts to give meaning to a cause that cannot alone be sustained by empty rhetoric and talk of abstract freedom. Veterans gave their best to this Nation so that it might not perish from the Earth, but rather long endure. At the very least, this Court can and should honor their sacrifice by preserving the remnants of their mark on us all, the veterans memorials.

CONCLUSION

This Court should reverse the decision below and affirm that public acknowledgement of religion and its importance in our society is not endorsement. In addition, this Court should be mindful of the travesty of veterans memorials being bulldozed in the name of heckler's justice, and secure for such veterans memorials protection from overzealous courts.

Respectfully submitted,

PHILIP B. ONDERDONK, JR.
THE AMERICAN LEGION
700 N Pennsylvania St.
Indianapolis, Indiana
46204-1172

KELLY SHACKELFORD
Counsel of Record
HIRAM S. SASSER III
LIBERTY LEGAL INSTITUTE
903 18th Street, Suite 203
Plano, Texas 75074
(972) 423-3131
Counsel for Amicus Curiae

App. 1

Cathedral of the Pines

Schedule of Events

2004 Services

The Cathedral is available for Weddings, Memorial Services, Religious Services, Baptisms, Bar and Bat Mitzvahs, Services for Fraternal Groups, Veterans Groups, and Baccalaureate Services.

The Cathedral Hill Top House will be open during the winter months (November through April) by reservation for meetings, weddings and services.

Call prior to scheduled services for confirmation of schedule.

APRIL

April 11 – Sunday – 5:30 AM – **Easter Sunrise Service** with the Rev. Benjamin Swan, Pastor Monadnock Full Gospel Church, officiating

MAY

May 2 – Sunday – 11:00 AM – Loyalty Day Service. **Veterans of Foreign Wars and Ladies Auxiliary** of District 5, West Swanzey, NH. Clarence Nelson, arranging.

May 9 – Sunday – 11:00 AM – **Cornerstone Outreach Ministries.** Blessing of the Bikers. The Joseph Delio, officiating

May 15 – Saturday – 10:00 AM – **101st Airborne Division,** Rededication Ceremony. Robert M. Delia, CSM, U.S. Army (Ret.), arranging

May 16 – Sunday – 10:00 AM – **United Commercial Travelers,** Memorial Service. Ron Rugiauge, arranging.

– 1:00 PM – **Fraternal Order of the Eagles.** 42nd Annual Memorial Service. Joe Markevich, Secretary, Connecticut State Aerie, arranging.

May 22 – Saturday – 9:00 AM – **Southern New England Conference "Pathfinders."** Pastor Bob Saunders, officiating.

– 1:00 PM – **WAVES.** Memorial Service. Barbara Rice, arranging

May 23 – Sunday – 1:00 – 3:00 PM – Meditational **Labyrinth Walk** – Carol Renwick and Yvonne Dunetz, arranging.

May 27 – Thursday – 4:00 PM – Baccalaureate Service. **The Winchendon School,** Winchendon, MA. Marilyn LaBelle, arranging.

May 30 – Sunday – 2:00 PM – **Annual Memorial Day Observance** for all American War Dead.

JUNE

June 6 – Sunday – 3:00 PM – **Daughters of Scotia.** Scottish Service. The Rev. Dr. Gerald G. Wyrwas, officiating. Ethel M. Wyrwas, arranging.

– 4:00 PM – **Central Association, Massachusetts Conference, United Church of Christ.** Worship Service. Jane Clarke, arranging.

– 6:00 PM – Baccalaureate Service. **Mascenic Regional High School**, New Ipswich, NH. Cheryl Bellow, arranging.

June 9 – Wednesday – 9:30 AM – **Masters Christian Academy.** Worship Service. Lori Applegarth, arranging.

June 20 – Sunday – 11:00 AM – **Charles Street AME Church,** Dorchester, MA. Worship Service. Sarah Claytor, arranging.

– 2:00 PM – **Third Annual Wedding Vow Renewal Service**. Sponsored by Cathedral of the Pines. To schedule your renewal of vows, please call (603) 899-3300. Sandy Pastor, Director of Programs arranging.

June 27 – Sunday – 11:00 AM – **Annual Masonic Service (55th year).** Sponsored by Altemont Lodge #26 & Grand Lodge of NH. Nils Bergstrom, arranging.

– 3:00 PM – **New England Grange Family Service.** Sponsored by New Hampshire State Grange. Chaplain Hugh Clark, officiating and arranging.

JULY

July 4 – Sunday – 11:00 AM – **Greenfield Congregational Covenant Church,** of Greenfield, NH. Worship Service. The Rev. Daniel Osgood, officiating and arranging.

July 11 – Sunday – 10:00 AM – **Greek Orthodox Divine Liturgy.** Chris Booras, arranging.

– 3:00 PM – **Polish National Catholic Church.** Eastern Diocese Vesper Service. The Very Rev. Joseph Soltysiak, assisting and arranging.

July 18 – Sunday – 10:00 AM – **Church of Christ** of Brookline, NH. Worship Service. Dr, David W. Smith, officiating.

– 3:00 PM – **Baha'i Faith of Peterborough, NH** Coordinated by the Baha'i's of the Monadnock Region. Julie Swan, arranging.

July 24 – Saturday – 1:00 PM – **Concord Baptist Church,** Boston, MA. Kate Days, arranging.

July 25 – Sunday – 10:00 AM – 3:00 PM – **Cathedral Gardens Tour.** A guided tour of the beautiful Cathedral Gardens sponsored by Cathedral of the Pines. Barbara Hadsell, arranging

AUGUST

August 1 – Sunday – 10:00 AM – **First Congregational Church of Rindge and First Church in Jaffrey, U.C.C.** Combined Worship Service. The Rev. James Melhorn and William Beardslee, arranging.

– 11:00 AM – **The New England Pythians Knights & Sisters.** Memorial Service. Larry Ackerson, arranging.

– 3:00 PM – **Annual Jewish Service.** (58th year.) Rabbi Seth L Berstein, D. Min., arranging.

– 7:00 PM – **Fleur de Lis Camp,** Fitzwilliam, NH. Episcopal Evening Worship. Elizabeth Young, Director, arranging.

August 5 – Thursday – 9:00 AM – **National Havurah Summer Institute 2004.** Christine Oliger, arranging.

August 7 – Saturday – 1:00 PM – **Odd Fellows & Rebekahs** (52nd year) Memorial Service sponsored by Massachusetts Rebekah Assembly, IOOF. Barbara McLaren, arranging.

August 8 – Sunday – 10:00 AM – **Monadnock Bible Baptist Church.** Worship Service. The Rev. Thomas Peragallo, officiating and arranging.

– 1:30 PM – **Cranston Senior Guild** of Warwick, RI. Chaplain Mel Levine, officiating. Phyllis Solod, arranging.

August 14 – Saturday – 11:00 AM – **Amaranth Service.** Sponsored by Nashoba Valley Court #13. The Rev. David Forry, officiating. Clark W. Page, Sr., Royal Patron, arranging.

August 15 – Sunday – 1:00 PM – **Rosicrucian AMORC,** Johannes Kelpius Lodge. Rededication Service. Moses Debediana, arranging.

– 3:00 PM – **North American Spiritualist Conference.** Mary Lou Baumhoff, arranging.

– 4:30 PM – **U.S.A.F. Band of Liberty New England Winds Woodwind Quintet** from Hanscom AFB, MA. Craig Matta, arranging.

August 21 – Saturday – 11:00 AM – **Daughters of the American Revolution.** Service Sponsored by New Hampshire Society DAR. Chaplain General Mary Lou James, speaker. Barbara Langley, Conference Chairman, arranging.

August 22 – Sunday – 3:00 PM – **Fitchburg Assembly of God,** Fitchburg, MA. Worship Service. The Rev. Russell Grant, officiating and arranging.

August 29 – Sunday – 3:00 PM – **Christian Science Healing and Testimony Service.** Don Alusic, arranging.

SEPTEMBER

September 6 – Monday, Labor Day – 10:00 AM – **AA Open Meeting**

September 11 – Saturday – 11:00 AM – **Loyal Order of Moose.** 41st Annual Memorial Service. Tom Buck, Secretary, arranging.

– 7:00 PM – **Prayer Service** in observance of the "Attack on America," September 11th, 2001

September 12 – Sunday – 1:00 PM – **International Order of the Rainbow for Girls.** Massachusetts Grand Assembly. Sandra J. Marshall, Supreme Inspector in Massachusetts, arranging.

September 19 – Sunday – 11:00 AM – **New England Lions and Lioness Council,** Present & Past District Governors, Memorial Service. Ed Lecius, arranging.

– 1:00 PM – **Hospice at HCS.** Memorial Service. Lorraine Bishop, arranging.

September 24 – Friday – 7:30 PM – **Elisabeth von Trapp in concert with Erich Kory, cellist.** inside the Hilltop House. Tickets are $15.00 with limited seating, so call (603) 899-3300 for yours!

September 26 – Sunday – 11:00 AM – **Second Congregational Church, UCC, Wilton, NH.** Worship Service. Deacon Richard Carlson, arranging.

– 3:00 PM – **First Baptist Church of Boston.** Worship Service. Deacon Melvin Jennison, officiating and arranging.

OCTOBER

October 2 – Saturday – 6:00 PM – **Blessing of God's Creatures** large and small in the St. Francis of Assisi Garden. Sandy Pastor, arranging.

October 10 – Sunday – 3:00 PM – **Cornerstone Outreach Ministries.** Worship Service. The Rev. Joseph Delio, officiating.

NOVEMBER

November 11 – Thursday – 10:45 AM – **Veteran's Day** observance. Rindge Veteran's Association Honor Guard and Color Guard.